

PROPOSALS

Humbly offered to the

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PARLIAMENT

OF

Great-Britain and Ireland.

31
Sec 11

For Remedying the

Great Charge and Delay

OF

SUITS at LAW

AND IN

EQUITY.

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The Seventh Edition, with Additions.

By an Eminent Lawyer.

DUBLIN:

Printed and sold by George Faulkner, in
Pembroke-Court, Castle-Street, 1726.

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P 965 R

TO THE
Right Honourable, and Honourable,
THE
S P E A K E R
AND
M E M B E R S,
Of the Honourable

HOUSE of COMMONS

THESE
P R O P O S A L S

As useful to both N A T I O N S

I N S C R I B E D

And most humbly Submitted, to the
Consideration of both Houses, of
P A R L I A M E N T.

le;
THE

P R E F A C E.

THE prodigious Charge and Delay of Suits is a Grievance universally complain'd of; Vox Populi is lifted up loud against it; it has well nigh swallowed up the common Justice of the Kingdom: And the Secret of this Grievance, lying particularly within the Knowledge of Attorneys and Solicitors, more than any other Persons whatsoever, I therefore thought I could not do my native Country a greater Service than fairly to discover and state the Causes of it to the Parliament (our great Refuge in such Cases) and to recommend to 'em a Way how they may remedy it, without doing Injury to any Body. The Undertaking I propose to 'em, it's true, is very great, but so is the Grievance, and so is their Wisdom and Power, and nothing but an Act of Parliament can do it: And, God be thank'd, no Grievances, nor no Persons gaining by 'em, are too great for a Parliament; and I hope every Member of it, as well Peer, as Commoner, will lay his Hand upon his Heart, and seriously consider, that if he has not yet suffer'd by this Grievance, he knows not how soon, he may; and that many of his Friends and Acquaintance, and their Estates, have either been totally ruined and torn in Pieces, or been miserably harrass'd and damnified by it, and that he will then heartily set about remedying such great Evils

for

for the future ; and I earnestly wish Success to his Endeavours, and that the Sore may be ripe to the Bottom, and cur'd to the Purpose.

Our Parliaments on many eminent Occasions heretofore, when publick Grievances were become very great, have exerted a noble Spirit, Resolution, and Love for their Country, and have at once pluckt such Grievances up by the very Roots, without Regard either to Officers or their Fees, or even to the Royal Revenue itself ; and I hope our present Parliament will in some Measure imitate them, as to our present Grievance, only giving a Recompence for what they take away. It would be endless to name all the Instances of our former Parliaments Behaviour of this kind that are recorded to their Glory: But I cannot forbear instancing a few, viz. The many Acts of Resumption, the Acts for abolishing the Court of Star-Chamber, the High Commission Court, the President and Council of Wales, the President and Council of the North, the Court of Wards and Liveries, the Act for restraining the Power of the Privy Council, the Act of 1 H. VIII. C. 6. which repealed the very worst Act I think that ever was made, I mean the 11 H. VII. C. 3. which authorized Judges of Assize and Justices of Peace to hear and determine all Offences, except Treason, Murder, and Felony, by their Discretion, without a Jury, whereby those wicked Instruments, Empson and Dudley, did by Oppression bring such vast Wealth to H. VII. But I think the most glorious Instance of all, and the worthiest of Remembrance, is the Statute of 18 Ed. I. de Judaismo, an Account of which is given by my Lord Coke in 2 Inst. p. 506. where it appears, that

noble

his En- noble King had a Revenue of 60000 l. a Year paid him
 e Bot- by the Jews, as a Tribute for their Privilege of living,
 hereto- and trading here in England: A prodigious Revenue
 great, equal I believe in Value then to one half of his Maje-
 l Low- sty's Revenue at this Time, for it's about four hun-
 b Gri- dred and thirty Years ago, when Money was far more
 ther to scarce and valuable than now; and yet that noble
 nue in- King and Parliament gave it all up for the Good of
 n some- the People, and to rid the Nation of the Jews, which
 vance, my Lord Coke there calls the Infidel Jews, a pesti-
 y. It- lent Weed, and a People odious both to God and Man.
 ur for- All the Jews that were then in England were but a-
 re re- bout fifteen thousand, and they were then incapable of
 nstan- purchasing either Houses or Lands, and yet could af-
 n, the- ford to pay so vast a Tribute. I believe they are now
 r, the- treble that Number that live amongst us, and have not
 acil of- only got vast Wealth in our Funds, but a Share of our
 a, the- Lands, and I doubt not but are ten times richer than
 aining- their Brethren in Edward I.'s Time; and yet——

I publish'd two Editions of this Treatise seventeen
 Years ago, there seeming then to have been a good Dis-
 position in the Parliament, to have done something in
 this Affair; and a Redress being much talk'd of, a-
 gain at this Time, I therefore thought it might possibly
 be of some Service against the next Sessions to set out
 a third Edition, with a few Additions. The Grievance
 in these last seventeen Years is much increased, and
 still growing, and calls for a speedy Stop to be put to it:
 And if my Scheme for that Purpose is not approved
 of, it may still be of some Service towards forming a
 better: And if it is but of the least Service towards
 redressing so great a Grievance, it answers my End.

The

The main Foundation on which I build my Proposals, is, the sinking several useless Offices, and reducing the Fees of the rest. Which cannot be justly done without first redeeming of them at the Prices they were bought, and that cannot be done without a great Sum of Money: For raising whereof I shall propose a new Tax only upon the Lawyers themselves, and which the Attorneys and Solicitors I am confident for their Parts will universally submit to, with Chearfulness; for tho' not one of them knows my Name, or has in the least been privy to, or consulted about this Treatise, either now or heretofore, yet I have casually heard so many of them declare their Willingness to pay the Tax proposed, that I believe I may guess they spoke the Sense of our whole Body.

P R O.

PROPOSALS

Humbly offered to the

PARLIAMENT, &c.

THERE has of late Years been much Talk about amending the Law ; but to my Apprehension, the Grievance is mistaken ; for certainly it's not the Law that wants amending, (that's already the best in the World) but the Practice of it, which is now grown to that wretched Pass, that in many Cases it makes a total Failure of Justice ; as if a Debt be only about 3 l. and recoverable at Law, or 30 l. or 40 l. and recoverable only in Equity, the Plaintiff generally loses more in Taxing his Costs than his Debt comes to, and so is only banter'd with a Recovery, and had better have released his Debt at first, than have vex'd himself with suing for it. And moreover, the great Charge, and Delay of Justice, is not only injurious to all sorts of Suitors, but perfectly deprives the poorer sort of Justice, who (tho' they were sure of having it all again) cannot be so much in Disburse as a Suit requires, or cannot stay so long for their Money as the tedious Rules of the Courts oblige them to, before they can recover it ; and so are forced, either for those Reasons to lose all, or perhaps to compound and lose the great Part of a just Debt : And yet this is not the Fault

Fault of the Law, but the Practice of it ; it's those tedious chargeable Roads to Justice want amending ; and, when that's done, and not till then, we shall find Justice advanced to some Purpose.

I have not heard of any of our Profession that has wrote on this Subject, and therefore, one long Vacation, I bestow'd a few rainy Days in thinking of it, and do humbly conceive, that if some such Regulation was made, as is herein after proposed, we should find, that one Shilling and one Term would then go at least as far in obtaining Justice, as four Shillings and four Terms will now.

I own, I am an Attorney, nevertheless I sincerely declare I write this for no other End or Reason than pure Affection to my native Country, and the Laws of it, and out of a Desire that every one may have Justice cheap, and speedily administered to them, which would be a great Honour and Happiness to the Nation, and which no one would be better pleas'd with than my self ; for I do in my soul abhor the cruel Usage, Hardships and Miseries I daily see poor Suitors suffer, by the chargeable and dilatory Offices, Rules, and Forms of the Supreme Courts of Justice.

I think it hardly possible to redress any one Thing in the Practice, without taking away or diminishing the Fees of some or other of the Officers or Judges ; for every Alteration that can be made for the Benefit of the Suitor, will more or less affect them ; and it being also humbly proposed, in order to make the Redress effectual, that many Offices should be quite taken away and suppressed

ressed as altogether useless, and these Offices having for some Ages past been constantly bought and sold, and the Officers that now enjoy them having honestly bought them, and many of 'em at very, very dear Rates, and having, as the Law now stands, as good a Right to the ancient Fees of their Offices as any Man has to the Rents of his Estate; therefore I humbly apprehend their Offices or their Fees cannot with Justice be taken from them, or diminish'd, without giving them an Equivalent, nor indeed without also giving the Judges an Equivalent; for to suppress any of them will be taking away from the Judges some of their Perquisites entirely; and to diminish the Fees of the rest will consequently diminish the Price of the Office the next time it comes to be sold. These Considerations, and the want of a proper Fund, I verily believe, have been the great Obstacles in the way of any Redress hitherto; but I hope what I hereafter propose will effectually remove them, without injuring either the Judges or the Officers.

In order then to redress the exorbitant Charge and Delay of Suits, (which certainly is a great Grievance) I must begin with the Judges.

A Judge is an Officer of great Care, Pains and Anxiety, and one of the most considerable Officers in the Kingdom, on whose Learning and Integrity the Lives, Liberties, Properties, and all that's dear to the Subject, does in a very high Degree depend: he is *Lex Loquens*, the Life of the Law, and the Mouth of the Legislative Power. He's the Law's great Agent, the People's faithful Trustee

for all they have, their great Barrier between them and arbitrary Power, Oppression and Wrong: Their great Dispenser of Justice, bringing it with much Pains and Hazards of his Health, twice in every Year, home, as it were, to the very Door of every Man in the Kingdom: An Officer, that for my part, I never behold without very great Awe and Reverence, especially when I see him on the Bench impartially doing Justice, to Rich and Poor, High and Low, without respecting of Persons without Fear, Favour, or Affection to any one; judging and defending the Cause of the Widow, the Fatherless, the Poor, and the Oppressed, and confounding and condemning the wrong Doers and Oppressors. He then to me appears as a God; and is it not reasonable and just, nay, is it not convenient and necessary, that such a high Officer, of so great Consequence, should have an Income suitable to his Qualities and Services, and to the State and line of his Post, and sufficient to maintain the Grandeur of it? Is not such a Labourer worthy of a noble Hire? And yet how many Officers are there under the Government that have better Incomes than a Judge, and whose Places, compared to a Judge's, are of trivial Consequence, requiring no Learning, and but little Pains and Attendance, for the most part executed by Clerks and Deputies, and are many of 'em enjoy'd by Men that have not Learning enough to be a Judge's Clerk, or his Amanuensis, nor qualified for any other Employment under him, save his Train-bearer? And does it not seem very strange and unequal, that such

an ignorant Officer should have a better Salary or Income than so great, so eminent, and so learned an Officer as a Judge, who has bestow'd the Study of his whole Life to qualify himself for that high Station, and who cannot at last accept it without giving a full Price for it? that is, he must give up his Practice as a Counsel, which very often is more than a Judge's Salary. Now the *Primum Mobile* of all the Mischiefs and Inconveniences, I would humbly recommend to be redress'd, is the Smallness of the Judges Salaries, their taking divers Fees of the Subject for doing their Duty, and their selling of the several Offices under them. It would certainly be for the Honour of the Government, and Justice it self, that Judges should in all Cases administer Justice, without either they or their Clerks taking any manner of Fee or Reward of the Suitor; the very taking whercof looks like selling Justice; and it would render Justice very cheap, and consequently more speedy, if many Offices in the several Courts were suppress'd, as altogether insignificant, and if those left standing were to be disposed of *gratis* and their Fees reduced considerably lower.

These Offices are now Perquisites belonging to the Judges respectively, and I humbly think the Benefit of selling them, and the Fees the Judges now take, and their Salary from the Government, do not altogether amount to what a Judge (that great Arbitrator of our Lives and Fortunes) reasonably deserves: Therefore I would humbly propose, that every Puiſny Judge should have a certain

tain Salary of at least 2000 l. *per Annum*, and so in Proportion for the Chief Judges of each Court, and have no other Fee, Perquisite, Pension, or Income whatever. That the Judges should put in all Officers under them *gratis*, and that Judge and Officer should in open Court, take an Oath, no Reward was given or taken on that Account: This Reformation would raise the Esteem of the Judges, and would make them indifferent, impartial and quick of Dispatch; they would certainly then be free from all sordid Inducements, because go the Matter which way it would, were it done or not done, it would still be the same Benefit to them.

And besides other Advantages, such noble Salaries would not only be a Means to encourage at least, the younger Sons of the best Families in *England* to apply to the Study of the Law, in Hopes of such Preferments, but they would always tempt the greatest Men at the Bar, to accept even of a Puisny Judge's Place, which has been refused by many eminent Practicers, because their Practice was worth more to them; and this also has been the Cause, why we have often (tho' not at this Time) had some mean Puisny Judges upon the Bench. And what a great Injury it is to the Publick, to prefer a Man of mean Parts to a Place of Judicature, I leave any to judge, who has ever observed the Actions of those Men, especially upon their Circuits; it's there they do the most Mischief, where they are left to themselves; in *Westminster Hall* they neither do much Good nor much

much Harm, because they are kept steady by their learned Companions. To judge, and to determine, are two different Things; a mean Judge may hear and judge Causes, but he rarely determines them: His Opinion (though according to Law) is not of Authority enough to subdue the Partiality the Suitor has to his own Cause, who will rather think such a Judge in the Wrong, than himself; and will rather suspect such a Judge of Error and Mistake, than believe his own Cause bad; and therefore he seldom acquiesces under his Judgment, but, by a new Trial, or some other Way, brings the Matter about again, and so in Effect, makes two Causes of one: But such a Judge as the late Chief Justice *Holt*, (who came fully up to *Jethro's* Character of a Judge, and who had the Courage of *Gascoigne*, and the Judgement, Learning and Integrity of *Hales*) does not only judge, but determine: He (like a Fine) *Finem Litibus imponit*; his Opinion carries Reverence and Conviction along with it; it conquers and passes the Suitor's vain Opinion of his own Cause, and often brings him even to acknowledge himself in the wrong; or if not so, yet it has this good Effect upon him, it makes him submit and be quiet, as thinking it in vain to struggle against the Opinion of so great a Man. Therefore if *expedit Reipublicæ ut sit Finis Litium* be a good Maxim, it is consequently expedient such Men be made Judges as are capable of ending them, and raising their Salaries will tend much thereto at all Times hereafter. I forgot to mention New-years Gifts, a pernicious

icious Custom, that deserves suppressing; for those Gifts, if from a Counsel, seem intended by him for the Purchase of Favours and Preference, and the Liberty of being impertinent for a Year without Check from the Bench; and if they are from an Officer, it looks as if he thought they would induce the Judge to connive at his Extortions and Misdemeanors for the Year ensuing.

The next thing that will render Justice cheap and speedy, will be the suppressing many insignificant Offices, and reducing the Fees of the rest; In order to this, I humbly propose, that all the Officers who have bought their Places, be redeemed by the Government, at the Prices they gave for 'em; those that came in *gratis*, may be turned out *gratis*, and no Injury done them; but lest the Reader should be impatient to hear me out, because my Proposals hitherto seem unseasonable, intending to bring a Charge upon the Government; I promise by and by to propose a Way to defray all the Charge of advancing the Judges Salaries, and buying in the Offices by an easy Tax upon the Lawyers themselves (without any Diminution of his Majesty's Revenue) and which, I verily believe, the Lawyers will all agree to.

It would be too tedious to name all the Officers of the several Courts that I would propose to be bought in; therefore I shall only name some of the biggest of them. In the Court of *Chancery* there are the Six Clerks, Officers that signify not much, and do but little for 1000 l. *per Annum* a piece; the Main of their Business is to attend the Court

of *Chancery* at *Westminster* in Term-time only where they do nothing but now and then read some Pleaings, &c. And there have been heretofore some amongst them that have not been very ready at it, having been educated to Trades and not the Law; and tho' most of the *Chancery* Business be done else where than in *Westminster-Hall*, yet they never attend the Court any where but there; the sworn Clerks and Solicitors read for them gratis every where else) so it's plain they are not wanted on that Score, nor indeed are they of any manner of Use to the dispatching or doing of Justice; and since one diligent Person by himself and Deputy will easily do all their Business, and the suppressing them will save the Suitor abundance of Money, which these Six Clerks do little for, and take only because they have given 6 or 7000*l.* a piece for their Places; therefore its humbly proposed they shall be bought in, and suppress'd, and each Fees allowed one Person for himself and Deputy as, will amount to 4 or 500 *l. per Annum*, there being many Men of worth and Parts would be glad to undertake it at that Price, and would do the Business better than all of them now do.

The next are the Registers, whose Fees are exorbitant, and daily grown upon us more and more. They, amongst other things, often impose unnecessary Copies of Orders upon us, and always take 4*s.* a Side for the Orders themselves, and make 4 of those Sides out of one Sheet of Paper, written in a very loose, wide Hand, and stuffed with impertinent Recitals and Suggestions, making the Order

der a great deal longer than needs; so that an Order on Hearing shall sometimes come to 10 l. and by reason of its great Length, they must have a long Time to draw it up in, often three Months unless you give Expedition-Money. Whereas, if they were drawn up according to the excellent Forms, used by the Clerks of the House of Peers in drawing Orders upon Appeals, they would not come to the 20th part of what some of them do and might be drawn up in a Day or two; and in the Orders made by the Court of last Resort (which Orders, above all others, ought to be plain and certain) can generally be comprized in the 4th part or half a Sheet of Paper, I do not see why the *Chancery* Orders may not be so too; and indeed that Part of 'em which really is the Order seldom is much longer; but 'tis the insignificant Recitals make 'em so extravagant, and occasion also much subsequent unnecessary Expence: For the Entry, the Enrolment, the Writ of Execution, and the Copies thereof, are all lengthned in Proportion to the Order, so that these impertinent Recitals are sometimes paid for 5 times over. And 'tis observable that within these 40 Years they have greatly incroach'd upon us, making their Orders now generally much longer than they did then; and to what Excess they may come in Time if not curb'd, no one can tell: It is therefore proposed that this Office be bought in, and the Registers put in gratis, and then their Orders may be shortened, and Fees reduc'd, without any Injury

Then

There are also the Masters in *Chancery*, Register of the Report-office, the Affidavit-office, the Subpœna-office, the 2 Examiners in particular, the Cursitors, and many more, all which take extravagant Fees, much more than all they do can any ways be valued at : But they have bought their Places dear, and therefore must at least keep up (if not extend) their Fees, or they would be Losers by their Purchases ; therefore if they were bought in, and their Places filled *gratis*, they might afford to take the 4th part of what they now do, and have good Places too. But some of these Offices, with several others not named, are utterly insignificant, and may very well be suppressed, as not at all tending to the Administration or Dispatch, but, on the contrary, to the Obstruction of Justice.

In the *Common-Pleas* there's the *Custos Brevium*, an Office of little use, has a great Income for almost doing nothing. The 3 *Prothonotaries* next, who (as I have often heard) heretofore kept Clerks under them to enter all Pleadings, and make the Writs belonging to their Office ; and the *Prothonotaries* were paid for entering the Pleadings, and for making out the Writs ; but by degrees the *Prothonotaries* have turned off all their Clerks, and shuffled the Business upon the Attorneys themselves, who now enter all Pleadings, and make out all the Writs, and yet the *Prothonotary* (because he has given 7000 l. for his Place) still makes the Fees for the Pleadings and the Writs, and the Attorney, because he really does the Work, reckons Fees

for the Pleadings and the Writs too : So that by this Trick the Subject is notoriously defrauded, by paying twice for the same Thing, and the *Prothonotaries* are become of little Use to what they formerly were, doing nothing in a Manner, but setting their Hands, and taking the Money ; and being one Person, by himself and Deputy, may do all their Business, as well as one does it in the *King's-Bench*, therefore it is humbly proposed that they be brought in, and one Man put in *gratis* in their stead, at such Fees as will come to about 400 l. *per Annum*, and 'twill save the Subject a deal of Money. There are also the *Phillazers*, Warrant of Attorney Office, and many other Officers, both in this Court, the *King's-Bench*, and *Exchequer*, who are Incumbrances and Stumbling-blocks in the Way to Justice, signify little or nothing to the Administration or Dispatch of it, and who take great Fees, for no other Merit, but because they have bought their Places. And it's these Offices, make the Law so dear, and consequently dilatory ; for how often are Causes delay'd for want of Money from the Client, to satisfy these idle rapacious Officers ? and if any one was to examine Attorneys and Solicitors Bills, they would generally find 3 Parts in 4 paid to these Offices and for Council Fees. And I cannot but here observe the Infelicity we Attorneys and Solicitors are under, of having our Bills filled and swelled with the extravagant Fees and Expedition Money paid to these Officers, and the large Fees to Counsel ; we bear all the Reproach, and suffer for their Sins (they

they are out of our Clients Hearing and Reach) and it's we are exclaim'd against for the large Bills these Men occasion; our Clients think all is clear Gain to us, and are continually denouncing against us, *Woe unto ye Lawyers!*

Therefore the Way to make Law cheap, is to suppress the useless Offices, and to reform the Fees of the rest, and some way to restrain the excessive Fees to Counsel, who say their Fees are honorary, voluntarily given, and not demanded by them; but there are some of them have Ways with them that amount to a Demand in Law, tho' not to an actual Demand, or else their Fees would never have been got up so high, they being now three times higher than at the Revolution.

Justice in some degree will be advanced, when it may be had with small Charge; but to do it effectually, it will be necessary to reform the many dilatory and chargeable Customs, Rules and Forms of the several Courts, and by that Means render Justice speedy, which will certainly be a great Blessing, as on the other hand Delay is a great Mischief: [Delaying Justice being in many Cases as bad and fatal as totally denying it] Now it would be very tedious to instance all, or even the greatest Part of the many Causes of Delay in legal Proceedings; therefore I will only name some few, and begin with the *Court of Chancery*, which, for the Charge and Delay of it, is become formidable to all Mankind.

1. The great Number of Processess, before you can come to a Sequestration, and the many Niceties

ties in suing out and returning them, which frequently is adjudged irregular, and the Plaintiff pays Cost for it, and is forced to begin again.

2. That there can be no Decree against a Defendant that has not appear'd, tho' you have run out all Process of Contempt against him.

3. The tedious way of compelling a dilatory Defendant to appear, and put in a full Answer, and the great length of the Returns of the Commissions to take Answers.

4. The great and unnecessary Charges and Delay of Petitioning, or moving for Subpœna's returnable *immediate*, Orders *nisi*, and many other Things of course, for which there's little Reason can be given.

5. The great Delay in granting Orders for long Time to answer, &c.

6. The Unreasonableness of allowing the Plaintiff only 40 s. Cost for an insufficient Answer, when he for the most part is delayed a Term, and necessarily spends 4 l. or more.

7. The expensive Ceremony of exhibiting Bills of Revivor upon the Death of a Party, which frequently happens where there are many Parties, and is a great Charge and Delay.

8. The unjust Preference and post-poning of Causes, which was first left off to be practised by the glorious Lord Chancellor Cowper *, and which,

* The Lord Cowper, since the first Edition of this Book, appointed every *Saturday* in Term, and particular Days after Term to be for Re-hearings only, which is still observed, and has been of very great Service to prevent frivolous Re-hearings of Causes.

tho' not now practised, it will be good to guard against his Successors, and to oblige them to hear all Causes in Course.

9. The Delay by re-hearing Causes, Pleas, Demurrers and Exceptions, which would not so frequently be, if the Party desiring the same was to pay full Costs (as in reason he ought) if the Order appealed from was affirmed, and those Re-hearings were always to be set the first in the Paper.

10. Above all, there's the great Charge and Delay before the Masters, the very worst Part of the Business of that Court, and more than all others, wants to be redress'd.

11. The ordering Money into a Master's Hand, and he to put it out on security, to be approved of by himself, by which means he becomes in a great measure Judge, how long he thinks fit to keep the Money : And by this means Orphan's Money frequently lies dead (to them) a long Time. But whoever thinks the Masters make no use of the Money, nor make more Gains than formerly, must be at a Loss for a Reason why they now give 6000 l. for their Places, which at the Revolution were sold only for about 1000 l.

12. The long Time before a Bill can be dismiss'd for want of Prosecution.

13. That Commissioners to examine Witnesses and their Clerks, are not upon Oath, * which lets them at Liberty to discover Evidence, and introduces Perjury, new Conversions, &c.

14. The

* The present Lord Chancellor about a Year ago remitted this, and ordered that they should all be upon Oath.

14. The great Delay in the Registers in drawing up Orders.

15. The tedious and chargeable Way of enforcing Obedience to Orders and Decrees, and the insignificant Expence of inrolling Decrees.

These, with many more I could name, may easily be redress'd, and put into a speedier and better Method, so that all Causes might be begun and ended in a Year or less, except where it appeared Witnesses were beyond Sea, or could not otherwise be had; and certainly he that has a Year's time to deliberate on a Cause in *Chancery*, cannot say he's surprized, or wants Time to prepare for his Defence.

As to Common Law Proceedings, I humbly recommend it to be considered, whether special Bail be really an Advantage in general or no. By the Wisdom of the Common Law, when it was *Lex non Scripta*, and for several Ages after, *Capias*, either in Mesne Process, or Execution, did not lie for Debt; but by the *Stat. 25. Ed. III. C. 17.* which was about three hundred Years after the Conquest, the *Capias* was first given in Debt, and since then Special Bail has been contrived, which is a Sting added to the *Capias*, and which I verily believe has undone many more Families than it has ever saved; for when a Man thro' his own Credulity, Oversight, or Folly, has trusted further than he ought, and contracted a bad Debt, then he arrests his Debtor, and holds him 'till he can draw in two innocent kind Friends to be his Bail; that is, to make that good, which by the Creditor's Folly, was become bad. The Debtor then runs away, and leaves

leaves his Bail to pay a Debt and Charges for which they never eat a Morsel of Bread, and ruins both their Families: This, in all its Circumstances, has many thousands of Times been the very Case; and the Frequency of such Instances so terrifies Men with the very Name of Bail, that many honest and substantial Tradesmen have been ruined for want of it, to Actions for Debts they were very well able to answer and pay, having a little Time; but their Friends not daring to bail them, the Rumour of that and the Arrest blasts their Reputation, brings all their Creditors upon 'em at once, and ruins them directly: Or else to avoid this, when they cannot get Bail (or may be such as the Bailiffs are pleased to like, in which they are very strict or very easy, according as they can get Money from the Prisoner) then the poor Prisoner gives a Judgment, or agrees to any extravagant Reckoning or Terms that are imposed upon him, in order to get his Liberty before the Matter reaches the Ears of his Neighbours and other Creditors. This is daily the unhappy Fate of Men, even when the Debt is just; but how deplorable a Case is it when Men (as it often happens) are thus ruined for want of Bail to a sham Action? Therefore considering this, and the great Charges incident to Bail, by assigning the Bail Bond and splitting one Action into three, and the Opportunity it gives those wicked Villians the Bailiffs, of robbing the Prisoners whilst under their Arrest, which I think they really do; for as a Highway-Man demands your Money at the Peril of being shot, so a Bailiff demands it at the Peril of being carry'd

carry'd to *Newgate*, or other Country Jail, which to many Men is as dreadful as being shot; I say, considering all these Things, and many more Inconveniencies too long to name, it's humbly submitted, whether it's not better intirely to abolish Special Bail, and that the Debtors Persons should be free until Judgment, but then to be liable to Execution; tho' even then it's Pity the Creditor should have that barbarous arbitrary Power over the Person of his Debtor and Fellow Christian, as to starve him in Jail, only to gratify his Revenge, without the least Prospect of ever gaining one Farthing of his Debt by it; for he that goes poor to Jail, must needs there grow poorer, especially if he's of any Trade or Employment: And the frequent merciful Interposition of the Parliament between the poor Debtors and their inhuman Creditors, shews that the general Law wants amending in this Particular. And it's humbly submitted, if it might not be reasonable to impower the Judges of the Court the Execution issues out of, on hearing both sides, to give the Defendant his Liberty, on making the best Satisfaction he can, leaving the Judgment still in Force for obliging the Defendant to perform what Order they make, and also for obliging him to make full Payment of the Debt, if ever he becomes able.

I also humbly submit it to be considered, whether Arrests and Outlawries to obtain Appearances are not very chargeable Inconveniencies. In the first of which you must employ that wicked Instrument a Bailiff, who always is a Means of inflaming the Reckoning considerably, there seldom being

being an Arrest, be the Debt never so small; but the Charges of it, one Way or other, come to 5 s. at least, and by Outlawry is very tedious and chargeable, through the Formality of many Processes sued out and returned in an absurd Manner; and since in an Ejectment, which recovers Possession, (the most sacred Thing in the Law) there's no Arrest, no Process, no Imparance, but one may (without any manner of previous Notice) before the Eftoin-Day of an issuable Term, deliver a Declaration to the Tenant in Possession, and, for not appearing, have Judgment by Default, the following Term; or if the Defendant does appear, the Cause must be tried the next Assizes; I see no manner of Reason why there should be so much more to do, and Delay by Arrests, Imparances, &c. in meer personal Demands, but that Proceedings ought to be as speedy for Recovery of them as Possession: And that upon leaving a Summons at the Defendant's House or Place of Abode, and afterwards a Declaration the Plaintiff may have the same Benefit as in the Ejectment: Some Debts are no other Ways to be secured, but by seizing the Person, therefore I should think it reasonable, the Plaintiff might be at Liberty, with the Leave of a Judge, upon making it appear by Oath, that without Bail the Debt would be in real Danger of being lost, to arrest the Defendant, and hold him to Bail, and the Defendant to have an Imparance in the Case of Bail, but in no Case else.

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The Delay by bringing Writs of Error is insufferable, and would be prevented, if the Party bringing the same was in all Cases to give good Bail, and to pay full Costs if the Judgment was affirmed or he Non-suited; on his Writ of Error abated, and then also to pay Interest for the Money and Costs recovered in the first Judgment, from the Day of signing thereof; for it cannot be thought unreasonable, that a Debt ascertained by Judgment should carry Interest against a Defendant, wilfully delaying the Payment of it. And in many Cases the Law now stands in this odd manner, (*viz.*) that a Debt before Judgment shall carry Interest, and cease to do so after; as on a promissory Note the Jury will give Interest in Damages, but when Judgment is signed upon it, Interest ceases: And tho' the Plaintiff be long kept out of the Money by a writ of Error brought avowedly for Delay, without the least pretence of Error, yet the Plaintiff has no Interest in the mean while; and it sometimes happens, that such Interest comes to more than the Expence of the Writ of Error, and is perhaps the sole Reason for bringing it; and 'tis submitted, whether the Liberty of bringing Writs of Error at Pleasure purely for Delay, and without the least Colour of Error, is not a matter fit to be some way restrained. There are abundance more nonsensical Rules, Forms and Practices, in the Proceedings both at Law and in Equity, which are Causes of great Charge and Delay, and without any manner of Sense or Reason, and would be

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be too tedious to insert here : And these few Instances are enough to shew something of the Grievance. Another thing seems to me unreasonable why the Plaintiff or the Defendant, should not, when he prevails, have full Costs both at Law and in Equity unless through a Confidence of prevailing in the Cause, it appears he has been extravagant in his Disbursements, and if so, then the Master to moderate them.

One Mischief more that wants Redress, is, the excessive Number of Attorneys and Solicitors : *The more Hounds, the more Hares*, says the old Proverb : When Business is scarce, (as it must needs fall thin amongst such great Numbers of them) then they turn Barretors, and do a thousand knavish, unjustifiable Things for Bread, and become common Nuisances to that Part of the Country they live in, and generally deserve hanging more than Highway-men ; as has often been declar'd by the late Lord Chief Justice *Hales* and others, that to convict one Barretor, was more Service to the Publick, than to hang many Felons. Now I humbly conceive, it would be inconvenient, in respect of Families and Marriages already had, to weed out the bad ones at present, and stop their practising ; it would be best to let Death do that ungrateful Work, which it may do in seven Years time ; but I should think doing something to prevent the Mischief growing again would do well, and that will best be done by having regard to the Number and Quality of Clerks put to Attorneys and Solicitors, and the Time they are bound for : Many Attorneys and Solicitors

Solicitors have four Clerks at a time, and not really Business for two, and they take 'em but for four or five Years at most (as it the difficult Art of an Attorney was to be learnt in less time than a common Trade) so that these Youngsters when they come out of their Time, are like young Partidges, running before they are well hatch'd, and just begin to learn, when they begin to be Masters.

Now, to prevent the Growth of 'em, I humbly conceive, it would be convenient to restrain Attorneys and Solicitors from having any more than two Clerks at the same Time, and those bound for seven Years a piece, and one to have served Half his Time, before a new one is taken. Attorneys and Solicitors ought to be Men of great Integrity and good Ingenuity, for the Success of a Cause frequently depends upon their discreet Management; and the Trust is so great, the Client must necessarily repose in them, that they have it in their Power to ruin any Cause by their Negligence, Ignorance or Treachery: Therefore, in order, that the Practice of the Law may be in good Hands, and only Persons of good Families and good Education, Learning and Substance, admitted to it, (which, in a great Measure, would set them above mean Tricks and petty Foggeries) I should think it would do well, if none were to be put Clerks but Gentlemens Sons, or of higher Quality, and those to be good Scholars, and approved of by the Justices of the Peace, at their publick Sessions, by Certificate, or by the Judges of Assize

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for the County: And that they, before they signify their Approbation of them, do see that the Parent or Friends of the young Clerk do secure and settle at least 40 l. per Annum, or a suitable Sum of Money to come to him at the Expiration of his Clerkship, that he may then have a Subsistence, and not be tempted, through Necessity, to do mean Things; whereas now, every little pitiful Tradesman, that can but just rake up Money enough to put his Son out Clerk, is for making him a Lawyer, and consequently, as he thinks, a Gentleman; and such a poor Creature, when his Clerkship is out, (having no Money nor Friends, but what are as poor as himself) must for Bread, some way or other, force a Trade, turns Barrister, oppresses the Country, and scandalizes the Profession. And I have always observed, that the scandalous Practicers were, for the most Part some of some abject, paltry Race, born and bred in Want, and having but very indifferent Principles on one Hand, and press'd by great Necessity on the other, they stick at nothing, but do incredible Mischief in the Commonwealth.

I sincerely protest, I have no By-ends in this Affair, of promoting the Interest of Attorneys and Solicitors; nor have I communicated this Matter to any Attorney or Solicitor whatsoever: nor can any one imagine how the Alteration I propose would make better for them, but worse; for thereby Causes would be shortned, and consequently their Gains too. And I hope (especially if this good Reformation is compass'd at their Expence)

it will be thought reasonable to advance their Fees, which, in the Courts of Law, are little better than Porters Wages ; 3 s. 4 d. an Hundred Years ago, would have gone a great Way at Market, to what it will now ; it was heretofore more than 20 s. is now : This, in respect of Counsellors Fees, has been consider'd, for they are got from 10 s. frequently to 10 l. nay, there are many of them Golden Counsellors, that hardly in a Year ever have a Fee in any thing but Gold, that would throw a 10 s. Fee at a Man's Head, should he offer it 'em : And, if there is to be (as it's necessary there should) Men of good Parts and Integrity, Attorneys and Solicitors, they must be encouraged by suitable Fees; or it's in vain to expect it.

It may be objected to me, that my Proposal would lessen the Duty on Parchment, &c. which if it should, that might, sure be afforded to be made good some other way, for the sake of such Reformation.

It may also be objected, that the People are generally litigious, and if the Law is made cheap it will encourage that Temper ; whereas the Dearness of it keeps them quiet.

This is the only Objection I can think of, that bears any tolerable Face, and sure this is a fallacious one ; it is in Effect to debar the Subject of Justice, because now and then a litigious Man might make ill Use of it. If this Objection had any Weight, why has there never yet been a Tax upon Law-Suits, to oblige the Plaintiff to pay

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much to the Government, *pro licentia litigandi*? And why has there never yet been distinct Prices set upon the Law, so much for a poor Man, and so much more for a rich one? for that the Costs that would ruin a poor Man, may be a Trifle to a rich one; and I hope it will not be denied, but a rich Man may be litigious, as well as a poor one. But I think, if Law-Suits be shorten and cheaper, the litigious Man will not be so dreadful, because he will the sooner have shot his Bolt, and with less Charge to his Adversary. And farther, there are already good Laws, (which still, if defective, may be supplied) for restraining litigious Suits; and if the Cause of Action be just and real, though but small, I see no Reason why the Plaintiff should not have *festinum remedium*, and for a small Charge; and if he that withstands a just Demand, is to pay full Costs, and he that prosecutes an unjust one, is to do the like, I cannot see what Encouragement there will be for the litigious Persons.

But moreover, I utterly deny the *English* are litigious; it is as much as to say, they are unmerciful, cruel, and revengeful; a Character no foreign Enemy, I dare say, will give of them: But yet, if they were so, I do take upon me to aver, upon my own Experience, and I believe all Practicers will concur with me in it, that the Dearest of the Law rather gratifies litigious Persons, than restrains 'em. How pleas'd are they to put their Adversary to great Charge? How often are people arrested for no other Reason but to throw them into the Hands of those legal Thieves, *Bailiffs*,

liffs, and put 'em to Charge? What's more common in our Clients Mouths, than to ask; What Cost will it put their Adversary to, if we do so and so? And if they find it great, then, cry they, Oh! do it by all means; and if they find it, but small, then they will not shew their Teeth for so small a Matter. I have but a Word more to this specious Objection, (*viz.*) That the City-Courts are cheap and speedy, and yet are thought a great Benefit and Advantage; and that if now and then a Mischief should happen in particular Cases, by the Cheapness of the Law, yet a Mischief is rather to be endur'd, than an Inconvenience.

Another Objection may possibly be made by the Officers, (*viz.*) That they have Freeholds in their Offices, and it would be Injustice to deprive them thereof. *Fuit hac Sapientia quondam publica, privatis discernere*, I think is Answer enough to that Objection: And does not every Parliament, in making Rivers navigable, &c. not only take away Freeholds, but even Inheritances too, upon reasonable Recompence? and I propose nothing without an Equivalent.

I have applied my Remedy to the Root, that is, to give the Judges and Officers an Equivalent for what's taken from 'em; without which, I should have a hundred specious Objections made to me, all founded upon Self-Interest; tho' I challenge the wisest Man amongst them to say how or which other Way, than what I propose, he will ever justly and effectually prevent or cure the exorbitant Charge and Delay of Suits, which is become terrible

rible to all Men, and is daily the Cause of Infinite Injustice, Misery and Oppression, and which has made Justice, like some fine costly Thing, only to be had by the Rich, and which the Poor must not pretend to.

There are aundance of Things more than I have mentioned, want to be redress'd, in order to make Justice cheap and speedy, and which no Body so well knows as Attorneys and Solicitors; and, I hope, if the Parliament thinks fit to do any Thing of this Nature, they will take farther information from some honest Attorneys and Solicitors, and make a thorough Reformation in all the Courts of *Law* and *Equity*. And if a Committee was appointed to enquire into the Truth of these Things, and was armed with Power to send for Persons, Papers and Records, they would (upon examining some eminent Attorneys and Solicitors, and the Books and Entries, &c. of the Officers of the several Courts) not only find all, but great deal worse than I have said, to be true; and would so plainly discover where this insupportable Grievance lies, and the way to redress it, that I make no doubt but such a good Parliament as we now have, would make a good Law for that purpose: And I hope my Brethren, the Attorneys and Solicitors, will speak out upon this Occasion, without Fear, Favour or Affection to these burthensome, idle Officers.

I lastly come to propose a Fund for the Purposes above, which is this: I suppose there are One thousand Serjeants at Law and Council, and

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Twenty thousand Attorneys, Solicitors and Clerks, in Courts in England and Ireland, (I doubt not, by what Observation and Enquiry I have made, but there are many more, but I will suppose only these Numbers) Now, if every Serjeant at Law pay 15 l. every Council 10 l. and every Attorney, Solicitor, and Clerk in Court 5 l. for a License to practice; this repeated Two Years, wou'd raise upwards of 220000 l. And I think, those that are not willing to pay so small a Sum, to reform the Law, ought to be debarred from practising it.

The Serjeants and Council have no Reason to quarrel at it, because it's in Order to advance the Judges Sallaries, which they, in due Time, may reap the Benefit of; and Attorneys and Solicitors cannot, and I dare say, will not object to it, but rejoyce at it; because it's to suppress many chargeable Offices, and reduce the Fees of the rest; and there's none of them but two Ways loses more every Year by these Offices than this Tax comes to; (as thus) 1st, They are greatly in Disburse to these Offices for all Sorts of Clients, good and bad and yearly lose more by bad Clients, for what they have laid down for 'em to these Offices, than this Tax comes to. And 2^{dly}, the very Interest of the Money they are constantly in Disburse to these Offices, would yearly be more than this Tax; which Disburse and Loss, would be saved to them for the future. This Tax will, I hope, buy in all the Offices; and for a perpetual Fund to pay the additional Salaries to the Judges,

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humbly propose that every one, that is put Clerk to an Attorney, Solicitor, Scrivener, Council, or Serjeant at Law, or Clerk, in any Office of Law or Equity, pay 20 l. at least; and every one that is admitted into any of the Inns of Court, to pay 25 l. at least; and every Attorney, Solicitor, or Clerk in any Office, for a License to practice, when they are out of their Time, to pay 30 l. every Council call'd to the Bar, 50 l. and every Serjeant call'd, to pay 50 l. These initiating Taxes cannot be objected against, because they may chuse whether they will be Professors of the Law or no, and, consequently, whether they will subject themselves to these Taxes or no. And moreover, the Difficulty and Chargeableness of putting out young Men to the Law, may be a further means of restraining the Number of its Practicers. I make no doubt but this last Tax will, *communibus Annis*, raise at least sufficient to answer the additional Salaries I propose. And if by either of these Funds there's found a Surplus, I hope it will be employ'd in buying in those two Prisons, the *King's-Bench* and *Fleet*, and setting them upon a new and better Foundation.

I hope I shall be pardon'd by the Gentlemen of the Long Robe, if I presume in the last Place to mention a few Things in the Law it self, that I humbly apprehend want to be altered.

The first and chief whereof is, in Relation to Juries. The Tryal by Jury. is the great distinguishing Mark of our Freedom and Happiness, above all the Nations upon Earth; such a Happiness,

ness, as the Wit of Man cannot contrive a greater for the Safety of our Lives, Liberties, and Fortunes; none of which can be taken from us, or hurt, without the unanimous Consent of twelve Men, all of them our Equals and Neighbours; not to be pick'd out by an Enemy, but returned by an Officer sworn to return them impartially; and when he has so done, still we have our reasonable Challenges and Exceptions to any of them; What *Englishman* or *Irishman* can think of this, without Excess of Love and Fondness for such an inestimable Law? And, on the other Hand, how can he forbear the utmost Concern, to see of how little Significancy and Safety it's become, by the Meanness and Corruption of Jurors, and by the accursed Knavery practised in Returning of them; which is Poison at the Fountain of Justice, and Rottenness in the very Heart of our Laws, and by which many Men have unjustly lost their Lives and Estates? Every honest Man will join with me in these Sentiments; but what is to be done, or how it is to be remedied, is the great Difficulty. It's to be feared, the greatest Penalties will never deter some Under-Sheriffs from the Crimes they have been so long and so gainfully accustomed to, and can so secretly commit in the corrupt Returning of Juries: Which Trust they have so grossly abus'd, that it's Pity they should enjoy it any longer. I humbly submit it therefore to Consideration, if the following Method, or something like it, might not be effectual for redressing this Grievance, viz. That there

There should be a general Regulation made of the Freeholders Books, and that none should be inserted there but such as have at least 50 l. a Year; and that immediatly after Trinity and Hillary Term, the two Judges for each following Circuit should cause the Under-Sheriff of each County within their Circnit, to bring their Freeholders book before them, with every Freeholder's Name taken out and wrote on distinct Scrouls, which being put into a Box, the Judges to draw out, by lot, 48 Freeholders, or more or less, according to the Bigness of each County, and they to be summoned to attend at the Assizes, under a severe penalty, and the whole Number of them to be returned as the Jury, in every Cause, and their Names to be again wrote on Scrouls, and put into a Box; and when the Cause is called in Court, then the Associate in open Court to draw out, by lot, to the Number of Twelve, and they to try the Cause; this will take up no more Time than usual in filling up a Jury by Tales-men. And this is the only Method I can think of for preventing the abominable Corruptions both in Under-Sheriffs and Juries; for this will totally exclude the Under Sheriff, and no one will know the Jury till it be too late to attempt to bribe any of them. Gentlemen spend great Sums, and take great Pains, not only to be returned but in serving on the Grand Inquest of the Nation, the Commons in Parliament; and its humbly hoped, every Gentleman will think it below him, or a Trouble to serve on Juries, and see to the executing

as well as making of good Laws: And when all Gentlemen (and none of mean Degree) are equally liable to serve by Lot, in the Manner above proposed, it's hoped none of them will take Exceptions, or repine at serving their Country on such an important Occasion ; and I doubt not but every Man of them, when he comes to want a good Jury himself, for tryal of his Property, will be pleased with this Method.

As to special pleadings at Law, I humbly offer it to Consideration, whether it would not be a great Happiness to the Suitors to take them away entirely, and that the general Issue should be pleaded in all Cases ; the only Use I could ever conceive of Special Pleadings (besides the great Gain they bring to the Attorneys, Officers, and Counsel) is to reduce the Matters in Difference between the Parties to a single Question, and thereby give each of them Notice what is to be proved and defended at the Tryal ; otherwise they might meet there as unequally match'd as when a Man challenges another without naming the Weapon, and then brings a Pistol, and the other only a Sword : But if either Party be obliged to give reasonable Notice in Writing of any special Matter to be insisted on, or given in Evidence at the Tryal, I should think that Method would make Special Pleadings useless, and that the Merit of the Cause might by that Method be as fairly and effectually tried, as by the Help of Special Pleadings. I have already mentioned what I take to be the Use of Special Pleadings, and as

the Mischiefs attending them, I need say little, they are so well known. The Preamble of the Statute of 27 Eliz. of Jeofayles, has recorded that Parliament's Opinion of them in these remarkable Words, (*viz.*) *That excessive Charges and Expences, and great Delay and Hinderance of Justice, hath grown in Actions and Suits between the Subjects of this Realm, by Reason that upon some small mistaking or Want of Form in Pleadings, Judgments are often reversed by Writs of Error; and oftentimes upon Demurrer in Law, given otherwise than the Matter in Law, and very Right of the Cause doth require; whereby the Parties are constrained either utterly to lose their Right, or else after long Time, and great Trouble and Expence, to revive again their Suits.* Which Act, and the several other Statutes of Jeofayles, and the express Provision made in several other Acts for the Defendants to plead the general Issue, and give the special Matter in Evidence, do all shew our Parliaments have all along had a Dislike to Special Pleadings: And whoever was to see how many honest Causes, and just Debts, are frequently either lost, or greatly delayed, by the Quibbles and Niceties in Special Pleadings, would have an Abhorrence of them; for is it not to be abhorr'd that Liberty or Imprisonment, Innocence or Guilt, Plenty or Poverty, or perhaps the Happiness or Misery of a whole Family should depend upon a Cum, an *Absque hoc*, a *Necnon*, or numberless other small Niceties in Pleadings, that the most learned Council, notwithstanding their utmost Care, are daily mistaken in, to the Ruin of their

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Client's Cause? And since by an establish'd Rule, approv'd by long Experience, the general Issue, and nothing else, is always pleaded in Ejectment where the Title of Lands and Possession are in Question, I cannot see why it may not be also pleaded in all other Cases; especially in giving Notice as aforesaid of any special Defence, which is an Advantage the Parties in Ejectment are not bound to give each other. This Method I propose of pleading the general Issue and giving Notice of any special Matter, is countenanced by the Method of proceeding even in one criminal Case, if I mistake not [for Prosecutions of that Kind are very rare, it's pity they are not as frequent as the Crime) I mean in an Indictment of an Attorney for Barretry : No particular Instance of the Crime is alledg'd in the Indictment, but it's only charged in general, that he is, *Communis Barretrator Litium, Discordiarum. inter Vicinos Seministrator & Pacis Regis Perturbator* ; and yet the Defendant must plead *Not Guilty*, and the Prosecutor is bound to specify and give Notice in Writing to the Defendant of the Facts he intends to charge and prove against him at the Trial: If therefore this Method is allow'd in a criminal Case, it seems to argue strongly in Favour of the Method above proposed, in all civil Cases.

Obj. If it's objected, that Special Pleadings are necessary for stating the Case in Record otherwise there could be no Relief by Writ of Error, for nothing can be taken Notice of by the Judges in Error, but what appears on the Record, all

Matters of Evidence, or otherwise, are then out of their Reach; and if nothing was to be pleaded but the general Issue, the Judges would be Hood-wink'd from the Point of Law.

Resp. To this I answer, that it's already the daily Practice; when a Point of Law arises on a Trial, to have it stated in a Case, and either argued afterwards, before the Judge in his Chamber, or, if it's Matter of Difficulty, to have it set down to be argued in Court before all the Judges, in like Manner with Demurrers, &c. And if this Method is always to be taken, and the Case and the Judgment upon it entered on the Roll; I think it fully answers the Objection, and will also save the great Expence and Niceties of Special Verdicts.

Fines and Recoveries for barring Entails and Remainders; and conveying the Interests of married Women in Lands, are very chargeable Things, containing many Fictions. I knew a young Country Attorney that took the Label to a Deed to be the Tail of the Deed, and that cutting off of that with a Pen-knife, was cutting off the Entail contained in the Deed. Absurd as his Notion was, it cannot be affirm'd, that doing it by a common Recovery, is a great deal better. And yet the Lawyers of *Edw. IV's* Time have been greatly applauded for that Invention. But one would be apt to think, it was only because it made Riddance of Entails, which, from the Statute *de Donis* to that Time (being about two hundred Years) had been direct Perpetuities, and

were great Hindrances to the Lawyers: For the Estates so entailed, could neither be sold, mortgaged, or settled, and, consequently, there could be no Gains by making those Conveyances, nor by any Suits touching their Intricacy. The main Strength and Security of Fines and Recoveries lies in the Acknowledgement; every Thing after is meer Form; and whoever can be brought to seal a Deed, will easily at the same Time be brought to sign a Concord, or a Warrant of Attorney for a Recovery, or to acknowledge the one before a Judge, or pass the other at the Bar. But the greatest Number are done by Commission, and the Commissioners are generally Witnesses to the Deeds, that lead the Uses, and one of them the Attorney that makes the Deeds, and there's no more Difficulty or Solemnity than in the Execution of a bare Deed: and I humbly apprehend, that a Bargain and Sale first acknowledged, and then inrolled, would (if but so allowed) be a more rational and far cheaper Way of barring Entails and Remainders, and marry'd Womens Interests, than Fines and Recoveries; and such a Bargain and Sale in *London*, is, by the Custom, a good Grant and Bar of marry'd Womens Interests in Houses there. It's true, taking away Fines and Recoveries, will not only take away several Officers Fees, but a small Branch of the publick Revenue, and vacate several good Places; by whose Salaries, I doubt, most Part of that Revenue is swallowed up; but if an Equivalent is given, as before proposed, there's no Injury

injury will be done them. There's this farther Objection to Recoveries, that they cannot be perfected but in Term-time; and it has often happened, that Men have died in Vacations, before they could suffer a Recovery, to the great Prejudice of their Families and Creditors.

I always thought the Law, in several Instances too hard upon the Female Sex, and humbly offer it to Consideration, if out of Compassion to their natural Unfitness to manage Suits, and struggle with Hardships and Difficulties, it may not be proper to alter it in their Favour in these three Things, viz.

1st, That a Widow may have her Dower of a Trust; which, if the Estate or her Quality be never so great, she cannot now have either by Law or Equity, tho' she wants Bread. The Makers of the Stat. of 27 H. VIII. of Uses, little thought that excellent Law could have been so evaded as it is, by what is now called Trusts, which is very near the same Thing as Uses were before that Statute, and almost as full of Mischief. But what would they have thought, or what will any Man living (but a Lawyer of these Times) think of this Case? (and no doubt it has often been the Case, or very near it; viz. A Man, not worth a Farthing in the World, marries a Woman with many Thousand Pounds Portion, and then, in Trustees Names, buys Land with the whole Portion, in Trust for him and his Heirs, and dies. His next Heir, tho' never so remote, or his Devisee, tho' a meer Stranger,

Stranger, shall have the whole Estate, and Chancery will compel the Trustees to convey it to them. But the poor Widow, with whose Money it was bought, can neither by Law nor Equity get her Dower or Bread out of it, but must starve, tho' nothing was done by the Husband to hinder her, but only making Use of Trustees Names in the Purchase. All Men, save Lawyers must think this monstrous Cruelty. The odd and only Reason I ever heard given for it, is, that Dower is the Gift of the common Law to the Widow, and she must recover it by that Law that gives it, or not at all; and that Law having no Power over, or Cognizance of Trusts, therefore she must starve: Very hard Doctrine! especially considering that she's a Purchaser of her Dower, it being *præmium pudoris*, and that the Husband's Vendee, Mortgagee, Devisee, and his Bond and Judgment Creditors, shall all be relieved in Chancery, and fare as well as if the legal Estate had been in him; so that he is to be looked upon as absolute Owner of the Estate for every Purpose, but to give his poor Widow Bread out of it. But the Husband's Heir is not so hardly dealt by; tho' it should seem, his Heirship is as simply the Gift of the common Law as Dower, for if there be ten other Sons, the common Law excludes them all, and gives the whole Inheritance to him alone.

2dly, That Dower may be recovered by Ejectment, and Damages there given by the Jury equal to the Mesne Profits; Actions of Dower being

being very chargeable, difficult and dilatory, and sometimes outlasting the Widow's Life.

3dly, That in Regard Marriage is the highest consideration both in Law and Equity, therefore that the Wife in case of the Husband's Bankruptcy, or dying insolvent, should be in the first place reasonably provided for, as the chief Creditor; whereas now it but too often happens, that the poor Wife's Portion is the whole, or the greatest Part, of the Husband's Estate, and yet must all go to pay his Debts, even tho' they were contracted before she marry'd him, and she must starve. These, with many more hard Points of Law, in respect to Women, plainly shew, they never sat in Parliament.

Legacies, be they small or great, are recoverable only in the *Spiritual Court* or *Chancery*, and if charged on Lands, then only in *Chancery*; and Truth, I may say, such Legacies, if not pretty large ones, are recoverable no where, because of loss in taxing Costs, if the Suit be never so successful, is generally more than the Legacy. It's therefore submitted, whether it might not be a publick Advantage, to give an Action at Law for a Legacy payable after simple Contract Debts, in the same Manner as they are after Specialties.

The Law between Landlord and Tenant, is of more frequent Use than any other Branch of the Law, there being very few Men but are either Landlords or Tenants, and yet it's very deficient in many Particulars, of which I shall only instance two: The first is, that a Tenant, when his Lease
or

on Contract is expired, or if he be at Will only, and has no pretence whatsoever to keep Possession. but out of Obstinacy or Knavery, yet he cannot be turned out but by an Ejectment, tho' it be of a poor Cottage, the Rent whereof in many Years will not repay the Charges of the Ejectment. The second is, that if the Tenant puts the Landlord to avow in *Replevin*, he must in his Avowry set out his Title to the Premise, which if it be a Leasehold Estate is very often troublesome, for he must begin with the Original Lease, tho' never so old, and set out all the Wills Sale, Mortgages and Mesne Assignments till he brings the Title into himself and the Tenant has Liberty to traverse which of those Facts he pleases, and to take all Advantages of Slips in Pleading of them. This seems very unreasonable, and often renders Distresses for Rent a vain and unsuccessful Remedy; and it is the more unreasonable, for that in an Action of Debt or Covenant, for Rent, the Landlord is not bound to do so. In the first of these Cases it seems but reasonable that a Justice of Peace might, by his Warrant, remove the Tenant out of Possession in like manner, as on the Statute of forcible Entry; and in the second Case it's to be wish'd there were a new, speedier and easier Method in *Replevin*, throughout than is now used.

The Law touching Executors wants altering in many Instances for the Ease and Safety of honest Executors, and for the speedier Justice against dishonest ones. I will only name one, and that is, the tedious and chargeable Method of bringing them to Account in *Chancery* for their Assets, to the great Detriment of the Estate, Delay of the Creditors, and Vexation of honest Executors; but to the very good liking of knavish ones who want to keep the Assets in their Hands. It's true, we Attorneys and Solicitors like this Method very well, because one such Suit in *Chancery* against an Executor, is more gainful to us than half a dozen Actions at Law against him; and I doubt that is but too often the sole Inducement for suing him, even for a Bond Debt in *Chancery*; which is now a very common Thing; for tho'

no Bonds, Notes, &c. are recoverable only at Law: against the Debtor himself, yet they may be turned into many Chancery Suits against his Executor: which latter is very worthy of Consideration. And I therefore offer it to Consideration, that since there's no Pretence for Equity in such Cases, but to discover Assets, whether therefore if the Courts of Law, when *plene administravit* is pleaded, were empowered to name an Auditor [as in an Action of Account] and he to take the account of Assets; and have the same Power with a Master in Chancery, [but far less Gains] this would not be a very great Sale to honest Creditors and Executors, and prevent the wasting the Assets in chargeable Chancery Suits.

The naming of Auditors puts me in mind of some particular Excellencies of the common Law, which shew the original Goodness and Sufficiency, when Men were simpler and honest than now, *viz.* The Common Law can take Accounts, grant Injunctions and relieve in Cases merely equitable. As in an Action of Account they can appoint Auditors, the Writ of Estrepment is an Injunction, and by *audita Querela* they can relieve in many Cases of meer Equity. These among many others are noble Foundations and Principles in that Law on which, had proper Improvements been made, adapted to the Alterations Time makes in Things and Men, it might have kept down a great deal of the present unbounded Power of the Chancery, and greatly preserved the laudable Jurisdiction of the Common Law over Property. But these and many more of the finest Flowers of that most excellent Law have been rendred useless by the dilatory and difficult Forms and Niceties in the pleadings and proceedings relating to them. It's these thorns and Thistles in the way to Justice at the common Law, and the Corruption and Degeneracy of Judges and the small Fees to the Attorneys, that have so greatly tended to the Increase of Chancery Suits, where the Gains are great, and the Practise easy and plain; and therefore by one Fetch or Pretence of Equity or other

ther, most Suits of value are now brought in *Chancery* inlomuch that I verily believe two thirds in Number or at least two thirds in Value of the Questions touching Property decided in *Westminster Hall*, instead of being decided by four learned Judges acting by known Law assisted by a Jury for ascertaining of Facts on hearing Witnesses *viva voce* in the Presence of each Party (and which certainly is preferable to all other Methods used either here or in any other part of the World) are now-a-days decided in *Chancery* without a Jury, on written Evidence. And tho' the Judge there was endow'd with all the Wisdom, Learning and Perfection human Nature is capable of, yet he is but one Man, and we are told by the Spirit of Truth, that in the Multitude of Counsellors there is Safety. This Exchange of Jurisdiction cannot be very agreeable to an *Englishman*, and would be much less so were it not for the Appeal to our most noble Court of last Resort, that Multitude of august Counsellors in whom is our Safety, and who as they are big Men may err: But I verily believe all Men are of Opinion; they as seldom err as any Judicature upon Earth. And it's greatly to be wish'd, Appeals to them could be brought with the same Ease and Freedom as Writs of Error, and with as little Inconvenience to the Counsel.

I have been too tedious already, and will add no more but my Wishes that some effectual Reformation may be made in this Affair, whether in the way I propose or any other, it's not a Farthing matter, so it be done. And if it's so done, I doubt not but it will add great Glory to his Majesty's Reign, and in particular to this Parliament, and for which this and all Generations to come will call them blessed.

F I N I S.